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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,910	12/16/2003	Irving I. Dardik	ET-2	1393
1473	7590	08/31/2006		
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			EXAMINER SHEEHAN, JOHN P	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/738,910

Applicant(s)

DARDIK ET AL.

Examiner

John P. Sheehan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/04 1/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed January 4, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance of EPO Patent Document No. 0 005 676 A2, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The Examiner has considered the remaining references in the IDS but EPO Patent Document No. 0 005 676 A2 has not been considered. It is noted that on page 2 of the IDS applicants have stated that a copy of the International Search Report for PCT application PCT/03/40291 dated December 20, 2004 is enclosed. Applicants are advised that the Examiner did not receive said search report.
2. The Examiner acknowledges receipt of the information disclosure statement filed July 6, 2004. It is noted that the reference entitled "Industrial Mixing Technology: Chemical and Biological Applications is over 190 pages. respectively. Although there is no requirement that applicants explain the materiality of this reference, the cloaking of a clearly relevant reference in a long list of references or in an overly lengthy reference may not comply with applicants' duty to disclose, see Penn Yan Boats, Inc. v. Sea Lark Boats, Inc., 359 F. Supp. 948, aff'd 479 F. 2d. 1338. The Examiner has considered this reference in same manner as references encountered during a normal search of Office

search files. There is no duty to consider this reference to a greater extent than those ordinarily looked at during a regular search by the Examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 to 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- I. In claim 1, line 3, "the melt" lacks an antecedent.
- II. In claim 2, lines 2 and 3, "said systems" lacks an antecedent.
- III. In claim 3, line 3, "the process of continuous or semi-continuous casting" lacks an antecedent.

Claim Interpretation

5. The Examiner has interpreted the claim language appearing in claim 1, lines 3 to 8, "excited by m-phase systems of helical alternating currents...periodically repeated duration in time" as a description of the source of the electric current used to create the magnetic field used in the recited process and not as an actual process step. As such, this claim language is not considered to further limit the recited process.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 to 4 are rejected under 35 U.S.C. 102(b) as being anticipated by each of Summers (PCT Document No. WO 80/0199, cited in the IDS submitted January 4, 2005) or Swainston et al. (Swainston, EPO Document No. 0 080 326, cited in the IDS submitted January 4, 2006).

Each of the references teaches a method of casting, that is crystallizing, a molten metal in a helically traveling magnetic field as recited in the instant claims Summers, page 1, line 15 to page 2, line 20 and Swainston, page 1, line 10 to page 2, line 16). In view of the explanation set forth above under the heading, "Claim Interpretation", applicants' claimed process does not distinguish over the process taught by each of these references.

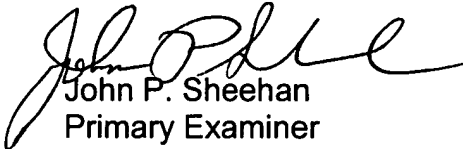
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Sheehan whose telephone number is (571) 272-1249. The examiner can normally be reached on T-F (6:45-4:30) Second Monday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


John P. Sheehan
Primary Examiner
Art Unit 1742

jps